

[Review] Land as a Human Right: A History of Land Law and Practice in Tanzania. Abdon Rwegasira. Dar es Salaam, Mkuki na Nyota, 2012. xxv + 412 pp. Paperback £34.95, ISBN 978-9987-08-152-3

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### **Book Review**

**Land as a Human Right: A History of Land Law and Practice in Tanzania** Abdon Rwegasira Dar es Salaam, Mkuki na Nyota, 2012. xxv + 412 pp. Paperback £34.95, ISBN 978-9987-08-152-3

"As in any other country in the world, the History of Land Law in Tanzania, especially, has been evolving along the axis of rights".<sup>1</sup> So Advocate Rwegasira contends in this important contribution to Tanzanian land law scholarship. As a book intended primarily for university law students, the author presents an historical analysis of land law in Tanzania from the pre-colonial period to the present, with detailed discussion of land law principles and precedent. However, this book stands apart from the conventional historical or "black letter" land law textbook. Drawing upon the works of established Tanzanian land law and human rights scholars,<sup>2</sup> the author conceptualises the history of land law in Tanzania as a history of struggles between the landed and landless over competing land rights. This leads him to adopt his own "human rights approach"<sup>3</sup> to the study of Tanzanian land law. His approach reflects upon this history of landed struggles and considers the ways in which human rights principles have been interpreted in seminal cases involving the landless or marginalised. He further analyses key developments in Tanzanian law where human rights and accompanying duties have been enshrined to protect the land rights of vulnerable social groups.

In common with more conventional land law text books, much of the first half of the book (chapters 1 to 5) is devoted to an historical overview and detailed analysis of case law and statute. Chapters 1 and 2 discuss the concept of a right to land in philosophical writings and international human rights instruments, and place developments in land tenure and land law reform in the context of social, economic and political change in Tanzania. Chapters 3 to 5 explore the variety of modes of acquisition and disposition of land in Tanzania, providing detailed consideration of case law and statute. Whilst the land law reforms under Tanzania's Land Acts of 1999 did not extend to inheritance matters, as the author observes "inheritance has traditionally been and remains the most common way of acquiring land in Tanzania".<sup>4</sup> Rwegasira devotes a full chapter to this important issue, with a particularly useful discussion of statutory, customary and Islamic principles of succession.

In these earlier chapters, Rwegasira develops his human rights approach by drawing attention to the significance of human rights in the development of Tanzanian land law. In subsequent chapters he turns his human rights lens to engage in a normative discussion of the landed struggles of women and indigenous minorities. Chapter 6 considers obstacles and progress made in Tanzania in recognising the land rights of women. Rwegasira concludes the chapter by highlighting some of the social and economic challenges facing women in realising their land rights in practice. However, as a textbook on land law the author's main focus is on how women's land rights have been recognised and interpreted through case law and statute. This doctrinal approach to evaluating the efficacy of statutory rights protection for women contrasts with that of some feminist legal scholars writing on Tanzanian land law, who analyse

the realisation of women's land rights in the context of social power relations and gendered tenure relations.<sup>5</sup>

Chapters 7 and 8 consider international and domestic law affecting the land rights of indigenous minorities and the right to adequate compensation for land grabbing and unlawful evictions. In each case, Rwegasira observes a somewhat mixed picture in implementation and respect for these rights in practice. Chapter 9 provides an overview of legal dispute resolution processes and discusses some access to justice issues. The book concludes with a final clarion call to the executive, legislators, judiciary, lawyers and the citizens of Tanzania "to ensure that all citizens access and enjoy the right to land".<sup>6</sup> The book has a clear activist edge, as the author conveys his personal conviction for the need to strengthen the rights of the vulnerable and the importance of human rights sensitisation and lobbying by Tanzanian NGOs. Equally, Rwegasira's careful legal research enables him to present an important legal argument on the significance of human rights in Tanzanian land law and land conflicts.

As would be expected from a textbook on land law, the author draws upon an extensive body of precedent and statute on land and succession matters, including case law from other jurisdictions and international law. However, the book does not offer a comprehensive analysis of all legislation and case law on land matters in Tanzania; indeed the author does not purport to offer this.<sup>7</sup> A more detailed critical analysis of recent developments in Tanzanian mortgages law, for example, may be found elsewhere.<sup>8</sup> However, as scholars and practitioners of Tanzanian land law will know, the study and practice of this subject has for many years suffered from reliance on outdated texts, deficiencies in law reporting and limited dissemination of Tanzanian scholarship. Rwegasira's use of unpublished sources and collaboration with prominent Tanzanian land law and human rights scholars is therefore particularly valuable, as is his own research of unreported case law and extended quotations from recent Tanzanian land cases. As a published, contemporary and detailed text on Tanzanian land law, this book represents a significant contribution to Tanzanian legal scholarship.

The book will be an important source for teachers, students and practitioners of Tanzanian land law. The appendix of sample documents relating to land transfers will be particularly useful for legal practice training. I would recommend it as a textbook for a Tanzanian or African land law course and as a reference for policymakers and scholars from law and other disciplines with an interest in Tanzanian land law and policy.

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<sup>1</sup> A Rwegasira *Land as a Human Right: A History of Land Law and Practice in Tanzania* (2012, Mkuki na Nyota) at xviii.

<sup>2</sup> Including GM Fimbo *Land Law Reforms in Tanzania* (2004, Dar es Salaam University Press), I Shivji *Not Yet Democracy: Reforming Land Tenure in Tanzania* (1998, IIED / HAKIARDHI / Faculty of Law, University of Dar es Salaam) and CM Peter *Human Rights in Tanzania: Selected Cases and Materials* (1997, Rüdiger Köppe Verlag).

<sup>3</sup> Rwegasira *Land as a Human Right*, above at note 1 at xxi.

<sup>4</sup> Id at xxiii.

<sup>5</sup> For example, A Manji "Gender and the politics of the land reform process in Tanzania" (1998) 36/4 *Journal of Modern African Studies* 645 and I Ik Dahl "Multiple threats, manifold strategies: Women, the state and secure tenure at the interface of human rights and local practices in Dar es Salaam" in B Derman, A Hellum and K Bergtora Sandvik (eds) *Worlds of Human Rights: The Ambiguities of Rights Claiming in Africa* (2013, Brill) 169.

<sup>6</sup> Rwegasira *Land as a Human Right*, above at note 1 at 364.

<sup>7</sup> Id at xxi.

<sup>8</sup> P McAuslan *Land Law Reform in Eastern Africa: Traditional or Transformative?* (2013, Routledge).